
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CHERYL L. THINNES, : MEMORANDUM DECISION
Plaintiff, : AFFIRMING COMMISSIONER'S
vs. : DECISION
MICHAEL J. ASTRUE, :
Commissioner of Social Security, :
Defendant. : Civil No.: 1:06CV00153

Plaintiff Cheryl Thinnnes appeals a decision of the Commissioner of Social Security denying her application for disability insurance benefits. At oral argument, Plaintiff was represented by David J. Holdsworth, and Defendant by Stephanie Kiley. After considering the evidence of record, the briefs of the parties, and the arguments presented, I affirm the Commissioner's decision denying benefits.

My review of the Commissioner's final decision under 42 U.S.C. § 405(g) is limited to whether substantial evidence in the record as a whole supports the ALJ's findings of fact and whether the correct legal standards were applied. *See Lax v. Astrue*, 489 F.3d 1080, 1084 (10th Cir. 2007). A reviewing court "may neither reweigh the evidence nor substitute [its] discretion

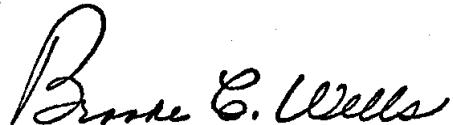
for that of the [ALJ]." *Id.* (citations omitted). Where evidence as a whole can support either the agency's decision or an award of benefits, the agency's decision must be affirmed. *See Ellison v. Sullivan*, 929 F.2d 534, 536 (10th Cir. 1990).

Plaintiff argues that the ALJ made an erroneous credibility determination because the ALJ did not find credible Plaintiff's allegations that fatigue and cognitive problems caused functional limitations. In turn, the Commissioner argues that the alleged limitations due to fatigue and cognitive problems are supported only by Plaintiff's testimony. The Commissioner asserts that the ALJ properly found record evidence outweighed Plaintiff's testimony and cited specific and legitimate reasons for her credibility finding. The Commissioner maintains that the ALJ's decision that Plaintiff was not disabled prior to her date last insured is supported by substantial evidence of record.

After considering the evidence and the parties' arguments, I find that substantial evidence supports the Commissioner's decision at each step of the sequential evaluation process and the decision is free from legal error. In addition, I find that Plaintiff has not met her burden to prove that she was disabled prior to her date last insured, December 31, 1999. Plaintiff's request for reversal or remand is DENIED and the Commissioner's decision is AFFIRMED.

IT IS SO ORDERED.

DATED this 12th day of May, 2008.



Honorable Brooke Wells
United States Magistrate Judge